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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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DEC 19 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Application by BellSouth Corporation, )  
BellSouth Telecommunications, Inc., and ) CC Docket No. 97-231  
BellSouth Long Distance, Inc., for )  
Provision of In-Region, InterLATA )  
Services in Louisiana )

REPLY COMMENTS OF ACSI

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## SUMMARY

The initial comments filed in this proceeding confirm that, once again, BellSouth has "jumped the gun" in filing a Section 271 application. Indeed, BellSouth's Application should be dismissed outright because it fails to make a good faith attempt at demonstrating compliance with the "roadmap" which was set forth in the Commission's *Ameritech Michigan Order*.

Even if the Commission is inclined to consider the merits of BellSouth's Application, it must be denied because:

- (1) BellSouth cannot satisfy Track A based on its agreements with PCS providers;
- (2) BellSouth's prices for unbundled network elements are neither cost-based nor geographically deaveraged;
- (3) BellSouth has not fully implemented the 14-point competitive checklist;
- (4) BellSouth refuses to establish performance measurements necessary to determine compliance with the Act; and
- (5) BellSouth's premature entry into the interLATA market is not in the public interest.

The Act contains a firm mandate that local competition be firmly established *before* the RBOCs are granted interLATA relief and additional long distance competition is realized. The Commission recognized this in its *Ameritech Michigan Order* and it should not backslide from the roadmap set forth therein. The nascent state of competitive entry in Louisiana proves that BellSouth has not come close to meeting the Act's requirements that it interconnect effectively and compete fairly. Since BellSouth has not and cannot make the required showing, its Application must be denied.

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CC Docket No. 97-231

To: The Commission

**REPLY COMMENTS OF ACSI**

American Communications Services, Inc. and its Louisiana operating subsidiaries, (collectively, "ACSI" or the "Company"), by their attorneys, respectfully submit the following Reply Comments in response to the initial round of comments on the Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region, interLATA services in Louisiana pursuant to Section 271 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act" or "1996 Act"). As explained in ACSI's Opposition filed on November 25, 1997, ACSI believes that BellSouth's Application is premature and should be dismissed because BellSouth ignores the roadmap set forth by the Federal Communications Commission's ("FCC" or "Commission") in its *Ameritech Michigan Order*.<sup>1</sup> Even if the Commission decides to rule on the merits, ACSI submitted that BellSouth's frivolous Application must be denied because: (1) BellSouth cannot satisfy Track A based on its agreements with personal communications service ("PCS") providers, (2)

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<sup>1</sup> *In the Matter of Ameritech Michigan Application Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, *Memorandum Opinion and Order* (rel. Aug. 19, 1997) (hereinafter, "*Ameritech Michigan Order*").

BellSouth's prices for unbundled network elements ("UNEs") are neither cost-based nor geographically deaveraged, as is required by the Act and Commission precedent; (3) BellSouth has not fully implemented the 14-point competitive checklist; and (4) BellSouth's premature entry into the interLATA market is not in the public interest. The initial round of comments and the Department of Justice's ("DOJ") Evaluation<sup>2</sup> contain substantial support for these positions.

### Introduction

If the comments filed on BellSouth's Application make one thing clearer than all else, it is that the Commission should not alter its roadmap and DOJ should not waiver on its insistence that local markets are fully and irreversibly open to competition prior to granting an RBOC's application for interLATA relief. Competitors seeking to enter local markets across BellSouth's territory came forth with a consistent message: *BellSouth has yet to establish a foundation for local competition as it remains unable or unwilling to satisfy the 14-point competitive checklist and comply with the pricing requirements of Sections 251 and 252.* Without reasonable and nondiscriminatory access to UNEs (including operations support systems ("OSS")) at cost-based prices, competition has no chance of taking hold in Louisiana. Many commenters and, to a more limited extent, DOJ decried BellSouth's and the Louisiana Public Service Commission's ("LPSC") labelling of BellSouth's rates as "cost-based". Simply put, BellSouth's cost studies were not based on forward-looking principles and some rates offered bear no relation to cost at all. Saying that rates are "cost-based" does

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<sup>2</sup> *Evaluation of the United States Department of Justice*, CC Docket No. 97-231 (Dec. 10, 1997) (hereinafter, "*DOJ Evaluation*").

not make it so. Rather, garbage in equals garbage out. The LPSC's Chief ALJ and staff and, to a lesser extent, the LPSC's consultant and DOJ recognized the fundamental problems associated with BellSouth's inputs — the LPSC and BellSouth inexplicably have failed to correct them.

DOJ, multiple CLECs and numerous state commissions also concluded that BellSouth has yet to dedicate the resources necessary to meet its wholesale support and other checklist obligations. Echoing ACSI's Opposition, many CLECs recounted difficulties caused by BellSouth's inability to provision UNEs and services for resale in compliance with the Act. Oddly, the LPSC chose to accept BellSouth's paper promises that it would provide access to OSS and UNEs on a nondiscriminatory basis without addressing competitors' countless claims that BellSouth's record, in Louisiana and throughout its service territory, demonstrates performance that not only falls short of those promises, but flouts the Act and the Commission's rules and policies in the process.

The fact that BellSouth remains obstinate in its refusal to provide performance measurements necessary to gauge its progress also was a main point of contention in DOJ's Evaluation and in the comments of competitors. As DOJ and competitors averred, compliance with the Act and the individual interconnection agreements (with wireline carriers) — which BellSouth eventually will need to rely on to gain Track A entry — cannot be determined in the absence of data that allows a comparison to be made between BellSouth's retail and wholesale provisioning performance. BellSouth must be able to provide competitors with ULLs as quickly and successfully as it is able to turn-up new lines for its own retail customers. BellSouth's insistence on reporting little more than its success

at actually installing ULLs (despite whether they work or not) on the day it promises to do so (despite whether that day is two days or two months after the competitor has made its request for service) reveals little more than its profound inability to provide checklist items at parity and its sheer determination to conceal data demonstrating that this is the case. The Commission ought not reward such deceitfulness.

The Act contains a firm mandate that local competition be firmly established *before* the RBOCs are granted interLATA relief and additional long distance competition is realized. ACSI has three state-of-the-art networks and local switching equipment already in place in Louisiana. Other facilities-based competitors also have invested heavily. Thus, it is BellSouth's lack of interest in complying with Section 271 and not any lack of interest in Louisiana on the part of facilities-based competitors that keeps BellSouth from reentering the long distance market. The fact that BellSouth's Application admittedly falls well short of complying with the Act and the Commission's roadmap demonstrates that BellSouth has more confidence in its ability to win a war of legal, regulatory and political attrition than in its ability to compete.<sup>3</sup> This is not surprising behavior for a monopolist. Nevertheless, Congress anticipated such reticence and adopted Section 271 to provide RBOCs with the necessary incentive to open their networks and overcome anticompetitive tendencies.

The Commission has an obligation hold fast to this mandate. ACSI respectfully reminds the Commission that, in Louisiana, Santa Claus and others featured in the

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<sup>3</sup> See *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, *Brief In Support of Application*, at 24-25 (Nov. 6, 1997) (hereinafter, "*BellSouth Brief*").

BellSouth/USTA blitzkrieg advertising campaign remain largely unable to purchase local telecommunications services from anyone other than their friendly monopoly provider RBOC. Nowhere in the Act, as BellSouth seems to claim, did Congress offer to trade the promise of local competition for an RBOC promise to reduce AT&T's *basic rates* by 5%. Indeed, BellSouth claims to have ported only a minuscule number of business and residential lines in Louisiana. This is so because BellSouth refuses to interconnect effectively and to compete fairly — the Act plainly requires that BellSouth do both before it is granted reentry into the interLATA market. Since BellSouth has done neither, its Application must be denied.

**I. BELLSOUTH CANNOT RELY ON ITS AGREEMENTS WITH PCS PROVIDERS TO SATISFY TRACK A**

In its Opposition, ACSI asserted that BellSouth could not rely on its agreements with PCS providers to satisfy Track A.<sup>4</sup> With the exception of Ameritech,<sup>5</sup> commenters addressing this point were unanimously in agreement with ACSI.<sup>6</sup> Specifically, ACSI maintained that BellSouth's reliance on its agreements with PCS providers was misplaced because the Commission has never found PCS carriers to be providers of telephone exchange service under Section 3(47)(A), which contains the only definition relevant to Section

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<sup>4</sup> *ACSI Opposition*, at 7-11.

<sup>5</sup> *See Ameritech Comments*, at 2-9.

<sup>6</sup> *ALTS Comments*, at 1-5; *AT&T Comments*, at 66-68; *CompTel Comments*, at 13-14; *KMC Comments*, at 2-3; *MCI Comments*, at 3-9; *Sprint Comments*, at 5-20; *TRA Comments*, at 15; *WorldCom Comments*, at 5.



271(c)(1)(A).<sup>7</sup> CompTel, MCI and Sprint agreed.<sup>8</sup> Without support Ameritech again disagreed.<sup>9</sup>

ACSI also based its position on the fact that the Commission has not determined that PCS is a substitute for local telephone service.<sup>10</sup> DOJ agreed: "PCS and wireline service are not currently close substitutes in Louisiana . . . we concur with the Commission's decision to refrain from treating PCS as a substitute . . . ." <sup>11</sup> Again, commenters concurred and clarified that PCS is a complement to and not a substitute for local exchange service.<sup>12</sup>

Several commenters ridiculed BellSouth's attempt to write the word "competing" out of Section 271(c)(1)(A).<sup>13</sup> ACSI also believes that BellSouth's attempt to rewrite the statute should not be countenanced and, in agreement with most commenters, underscores the fact that PCS is technically incomparable to and is not price competitive with wireline local exchange service.<sup>14</sup>

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<sup>7</sup> *ACSI Opposition*, at 8-9.

<sup>8</sup> *CompTel Comments*, at 14; *MCI Comments*, at 7-9; *Sprint Comments*, at 16-17.

<sup>9</sup> *Ameritech Comments*, at 2.

<sup>10</sup> *ACSI Opposition*, at 10.

<sup>11</sup> *DOJ Evaluation*, at 7-8 (citing the Commission's *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Second Report*, at 54-55 (rel. Mar. 25, 1997)).

<sup>12</sup> *See, e.g., Sprint Comments*, at 6-9.

<sup>13</sup> *See, Sprint Comments*, at 15-16.

<sup>14</sup> *See ALTS Comments*, at 2-3; *AT&T Comments*, at 66; *KMC Comments*, at 2-3; *MCI Comments*, at 3-5, 8-9.

CompTel asserted that "*mobile* services provided through PCS should not be deemed local exchange services to "*residential*" and "*business*" subscribers for the purposes of Section 271(c)(1)(A)."<sup>15</sup> ACSI agrees. In sum, "Congress' express exclusion of cellular service shows [at the very least] that where PCS operates like cellular service, as it does in Louisiana, then PCS does not constitute competing telephone exchange service within the meaning of section 271."<sup>16</sup>

## **II. THE LACK OF COST-BASED AND GEOGRAPHICALLY DEAVERAGED PRICING FOR ULLs WILL HAMSTRING THE DEVELOPMENT OF LOCAL COMPETITION IN LOUISIANA**

DOJ's assessment that "[c]ompetition through the use of [UNEs] will be seriously constrained, and may even be impossible, if those elements are not available at appropriate prices" is right on target and underscores the importance of this issue to facilities-based competitors like ACSI.<sup>17</sup> In spite this assessment and its own position that "if a state commission has not explained its critical decisions . . . [DOJ] will require further evidence that prices are consistent with its open market standard," DOJ's Evaluation contains a dangerously broad and sweeping statement that "BellSouth's pricing for [UNEs] in Louisiana is in most respects consistent with [DOJ's] focus on pro-competitive pricing principles."<sup>18</sup>

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<sup>15</sup> *CompTel Comments*, at 15 (emphasis added).

<sup>16</sup> *MCI Comments*, at 9.

<sup>17</sup> *DOJ Evaluation*, at 21.

<sup>18</sup> *Id.*, at 22.

DOJ came to this stunning conclusion in the absence of any evidence that the LPSC implemented the forward-looking cost methodology it professed to adopt. As AT&T aptly noted:

- The LPSC's consultant acknowledged that she lacked sufficient time to analyze most of BellSouth's rates.<sup>19</sup>
- The LPSC's Chief ALJ rejected BellSouth's position on virtually every pricing issue.<sup>20</sup>
- The LPSC, without explanation, overturned the ALJ's recommendation.<sup>21</sup>

Thus, although the LPSC professed to adopt a forward-looking cost methodology akin to that adopted by the Michigan PSC, it made no detectable attempt to apply it. Indeed, it gave its staff and consultant insufficient time to discern whether the cost studies submitted and prices proposed by BellSouth were based on forward-looking costs and it overruled its Chief ALJ's attempt to address the shortcomings that resulted. As AT&T noted:

The record demonstrates that BellSouth's cost studies had an admitted embedded-network and embedded-cost focus, and that — due to time constraints — the Commission staff and its consultant used those cost studies as a default, making only limited adjustments to certain improper generic inputs, such as manual cost factors and labor rates.<sup>22</sup>

Accordingly, ACSI and numerous commenters submitted that BellSouth's UNE rates *are not cost-based*, despite the fact that both the LPSC and BellSouth have labelled them as

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<sup>19</sup> *AT&T Comments*, at 35-38.

<sup>20</sup> *Id.*, at 38.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, at 31; *see also MCI Comments*, at 56-59 (the LPSC's permanent rates are inflated and are not based on forward-looking, efficient technology and network architecture); *ACSI Opposition*, at 22 ("BellSouth took the position in the Louisiana cost docket that 'it should be allowed to recover its actual, or embedded, costs'.").

such.<sup>23</sup> Thus, ACSI agrees with AT&T's assertion that "the LPSC affixed a 'cost-based' label to scores of prices that bear no relation to forward-looking costs."<sup>24</sup>

ACSI and other commenters asserted that this problem is particularly acute with respect to BellSouth's nonrecurring charges ("NRCs") associated with UNEs.<sup>25</sup> Echoing ACSI's observation, ALTS also noted that the LPSC-approved NRCs assessed by BellSouth for installation of a single two-wire loop amount to more than \$170 — an amount nearly double that charged by BellSouth to establish local exchange services for its own retail customers.<sup>26</sup> Similarly, MCI exposed how BellSouth refused to base its NRC for ULL installation on forward-looking, efficient technology and network architecture *and how this resulted in an NRC more than \$40 higher than if the NRC had been based on forward-looking assumptions.*<sup>27</sup> MCI also noted that BellSouth's LPSC-approved NRC of \$9.16 per OSS electronic order is not cost-based and is a substantial barrier to entry.<sup>28</sup> ACSI concurs, as MCI's observations underscore the general point made by ACSI in its Opposition: *BellSouth's non-cost-based NRCs have been set at prices so high that they constitute unlawful barriers to entry.*<sup>29</sup>

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<sup>23</sup> *ALTS Comments*, at 11-18; *AT&T Comments*, at 31-41; *MCI Comments*, at 53-64; *Sprint Comments*, at 40-41; *TRA Comments*, at 45.

<sup>24</sup> *AT&T Comments*, at 32.

<sup>25</sup> *ACSI Opposition*, at 16-18; *ALTS Comments*, at 16-17; *MCI Comments*, at 56-59.

<sup>26</sup> *ALTS Comments*, at 16-17; *ACSI Opposition*, at 17-18.

<sup>27</sup> *MCI Comments*, at 58-59.

<sup>28</sup> *Id.*, at n.42.

<sup>29</sup> *ACSI Opposition*, at 16-19.

ACSI also demonstrated in its Opposition how BellSouth's refusal to geographically deaverage its prices for UNEs and NRCs hampers competitive entry.<sup>30</sup> The LPSC's Chief ALJ and numerous commenters agreed.<sup>31</sup> However, as DOJ noted, here too, the LPSC overturned its Chief ALJ's recommendation without explanation.<sup>32</sup>

Indeed, DOJ also recognized that the lack of geographically deaveraged rates for ULLs will have a significant effect on facilities-based entry in Louisiana, and could profoundly effect the viability of competition for certain classes of customers.<sup>33</sup> ACSI illustrated this point in its Opposition by setting forth the way in which BellSouth's statewide-averaged ULL rates contribute to a residential cost-price squeeze that is forestalling the development of facilities-based residential service competition.<sup>34</sup> Nevertheless, DOJ states that it "does not believe that geographic deaveraging must necessarily take place immediately, before section 271 authority can be granted" but, rather, that "it must be clear that it will be accomplished over some transition period."<sup>35</sup> ACSI disagrees and submits that, unless rates are geographically deaveraged, they are not cost-based and as a result do

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<sup>30</sup> *ACSI Opposition*, at 15-16.

<sup>31</sup> *In re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies* . . . , Louisiana PSC Docket No. U-22022, *In re: Review and Consideration of BellSouth Telecommunications, Inc.'s Tariff* . . . , Louisiana PSC Docket No. U-22093, *Final Recommendation*, at 26 (Oct. 17, 1997); *ALTS Comments*, at 17-18; *MCI Comments*, at 55; *Sprint Comments*, at 40.

<sup>32</sup> *DOJ Evaluation*, at 24.

<sup>33</sup> *See id.*, at 24-25.

<sup>34</sup> *ACSI Opposition*, at 18-20.

<sup>35</sup> *DOJ Evaluation*, at 25-26.

not meet the pricing requirements of Section 252(d). Moreover, any delay in geographic deaveraging encourages delayed competitive entry and inappropriately penalizes the first new entrants. Thus, ACSI believes that the Commission should hold fast to its conclusion set forth in the *Ameritech Michigan Order*:

In order for us to conclude that sections 271(c)(2)(B)(i) and (ii) are met, rates based on TELRIC principles for interconnection and UNEs *must also be geographically deaveraged* to account for the different costs of building and maintaining networks in different geographic areas of varying population density.<sup>36</sup>

Finally, ACSI concurs with MCI's view that the LPSC's approval of BellSouth's permanent rates that charge the full cost of interim number portability ("INP") to new entrants is inconsistent with the pricing principles of Section 251(e)(2).<sup>37</sup> The Act clearly requires that such costs are to "be borne by all telecommunications carriers on a competitively neutral basis."<sup>38</sup>

### **III. BELLSOUTH HAS NOT DEMONSTRATED COMPLIANCE WITH THE COMPETITIVE CHECKLIST**

ACSI set forth in its Opposition multiple checklist shortcomings upon which the Commission should deny BellSouth's Application.<sup>39</sup> ACSI agrees with DOJ's observation that:

Under Track A, an applicant is required to show each checklist item is available both as a legal matter and as a practical matter. A mere paper promise to provide a

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<sup>36</sup> *Ameritech Michigan Order*, ¶ 292 (emphasis added).

<sup>37</sup> *MCI Comments*, at 59.

<sup>38</sup> 47 U.S.C. § 251(e)(2).

<sup>39</sup> *ACSI Opposition*, at 20-45.

checklist item, or an invitation to negotiate, would not be a sufficient basis for the Commission to conclude that a BOC "is providing" all checklist items.<sup>40</sup>

ACSI also concurs with DOJ's conclusion that BellSouth made no such showing in its Application.<sup>41</sup>

Indeed, every competitor filing comments cited BellSouth's inability to meet the checklist requirements as reason enough for denying BellSouth's Application.<sup>42</sup> Several commenters offered accounts of BellSouth's inability to provision UNEs and services for resale similar to those set forth by ACSI in its Opposition.<sup>43</sup> Others cited BellSouth's failure to coordinate ULL cutovers with INP or pointed more generally to BellSouth's difficulties in provisioning INP.<sup>44</sup> Still others noted that BellSouth's refusal to pay compensation for traffic to Internet service providers violates the reciprocal compensation requirement of the competitive checklist.<sup>45</sup> And others outlined even more shortcomings

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<sup>40</sup> *DOJ Evaluation*, at 9.

<sup>41</sup> *Id.*

<sup>42</sup> *ALTS Comments*, at 18-24; *AT&T Comments*, at 8, 41-50, 58-62; *Cox Comments*, at 3-12; *CompTel Comments*, at 5; *Hyperion Comments*, at 2-7; *Intermedia Comments*, at 3-9; *KMC Comments*, at 10-18; *LCI International Comments*, at 1-7, 10-14; *MCI Comments*, at 9-38; *Sprint Comments*, at 23-33, 56-58; *TRA Comments*, at 19-20, 25-34; *WorldCom Comments*, at 11-29.

<sup>43</sup> *See, e.g., ALTS Comments*, at 21-24; *AT&T Comments*, at 58-62; *Sprint Comments*, at 31-33.

<sup>44</sup> *See, e.g., MCI Comments*, at 66, 68-70; *Cox Comments*, at 9-12.

<sup>45</sup> *ALTS Comments*, at 24-26; *Cox Comments*, at 3-8; *Hyperion Comments*, at 25; *Intermedia Comments*, at 7-9; *KMC Comments*, at 15-18; *WorldCom Comments*, at 29.

with regard to host of additional checklist items.<sup>46</sup> Indeed, BellSouth itself admitted its inability to meet the checklist requirements.<sup>47</sup>

The LPSC made no independent assessment of BellSouth's actual performance or ability to provision checklist items but, rather, took BellSouth's promises and accepted them over the objections of competitors without question. As MCI observed:

The LPSC conducted a facial review of the SGAT, and held nothing more than that the SGAT includes provisions for each checklist item that nominally cited what the Act requires. It did not purport to evaluate the practical availability of checklist items on reasonable and nondiscriminatory terms and conditions, let alone whether BellSouth had provided and fully implemented checklist items pursuant to approved interconnection agreements.<sup>48</sup>

Indeed, MCI and Sprint each observed in their comments that the LPSC left completely unaddressed evidence demonstrating BellSouth's substantial problems in implementation its agreements,<sup>49</sup> despite SGAT terms that promise that BellSouth is ready, willing and able.<sup>50</sup>

Although the Commission could chose to deny BellSouth's Application on the basis of numerous fatal checklist deficiencies, perhaps none of these shortcomings is more fundamental than BellSouth's spectacular failure to devote the resources necessary to establish reasonable and nondiscriminatory access to its OSS. DOJ and nearly every

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<sup>46</sup> See, e.g., *Cox Comments*, at 9-12 (911); *MCI Comments*, at 68-70 (directory assistance).

<sup>47</sup> *BellSouth Brief*, at 24-25.

<sup>48</sup> *MCI Comments*, at 10.

<sup>49</sup> *MCI Comments*, at 11; *Sprint Comments*, at 26.

<sup>50</sup> See *BellSouth Brief*, at 22-23.



commenter cited BellSouth's OSS as a barrier to entry that prevents effective competition from taking hold in Louisiana and throughout BellSouth's service territory.<sup>51</sup>

The Commission itself has determined an applicant must demonstrate that its OSS is "actually handling current demand and will be able to handle reasonably foreseeable demand volumes."<sup>52</sup> BellSouth has made no such showing and the comments are replete with evidence demonstrating why it cannot.<sup>53</sup> For example, although BellSouth touts EDI as the answer to all of its OSS provisioning problems,<sup>54</sup> LCI recently has abandoned use of that interface citing excessive and time-consuming problems associated with using it.<sup>55</sup>

DOJ and ALTS noted that several state commissions have found the same OSS relied upon by BellSouth in this Application to be woefully deficient.<sup>56</sup> With regard to OSS, once again, the LPSC, without explanation, overturned its Chief ALJ's findings of substantial deficiencies and accepted BellSouth's representations with regard to its inability to provide

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<sup>51</sup> *DOJ Evaluation*, at 16-17; *ACSI Opposition*, at 35-37; *ALTS Comments*, at 18-21; *AT&T Comments*, at 41-50; *Hyperion Comments*, at 5; *Intermedia Comments*, at 3-6; *KMC Comments*, at 10-15; *LCI International Comments*, at 1-7; *MCI Comments*, at 11-38; *Sprint Comments*, at 26-31; *TRA Comments*, at 25; *WorldCom Comments*, at 11.

<sup>52</sup> *Ameritech Michigan Order*, ¶ 138.

<sup>53</sup> *DOJ Evaluation*, at 16-17; *ACSI Opposition*, at 35-37; *ALTS Comments*, at 18-21; *AT&T Comments*, at 41-50; *Hyperion Comments*, at 5; *Intermedia Comments*, at 3-6; *KMC Comments*, at 10-15; *LCI International Comments*, at 1-7; *MCI Comments*, at 11-38; *Sprint Comments*, at 26-31; *TRA Comments*, at 25; *WorldCom Comments*, at 11.

<sup>54</sup> *See BellSouth Brief*, at 30-32.

<sup>55</sup> *LCI International Comments*, at 6-7.

<sup>56</sup> *DOJ Evaluation*, at 19; *ALTS Comments*, at 20-21.

reasonable and nondiscriminatory access to OSS without addressing competitors' complaints to the contrary.

DOJ and the bulk of commenters correctly observed that without reasonable and nondiscriminatory access to OSS meaningful opportunities to compete will not be present in Louisiana. Indeed, DOJ echoed ACSI's concern that BellSouth's inadequate OSS prevents competitors from providing the level of quality and timeliness that customers rightly expect from telecommunications providers and that, faced with such shortcomings, customers will hold the *competing carrier* — not the delinquent incumbent — responsible for the failure.<sup>57</sup> Thus, until BellSouth is able to demonstrate that it has developed OSS capable of providing wholesale performance at parity with its own retail performance, Section 271 authority must be withheld.

#### **IV. BELLSOUTH STEADFASTLY REFUSES TO INSTITUTE THE PERFORMANCE MEASUREMENTS NECESSARY TO DETERMINE COMPLIANCE WITH THE ACT**

ACSI agrees with DOJ's conclusion that "BellSouth has failed to 'provide[] sufficient performance measurements to make a determination of parity or adequacy in the provision of resale or UNE products and services to CLECs.'"<sup>58</sup> As DOJ found in its BellSouth South Carolina Evaluation (to which it makes reference noting that BellSouth has made insignificant progress on this front since the time it filed its original Section 271 application for South Carolina), BellSouth's continued reliance on "percentage of dates missed" is not an

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<sup>57</sup> See *ACSI Opposition*, at 26; *DOJ Evaluation*, at 17.

<sup>58</sup> *DOJ Evaluation*, at 31 (citing *Friduss South Carolina Aff.*, ¶ 78).

acceptable substitute for providing actual installation intervals. Moreover, BellSouth's arbitrary measurements easily could conceal a significant lack of parity.<sup>59</sup>

In addition, ACSI concurs in DOJ's conclusion that BellSouth's lacks adequate performance measurements for (1) pre-ordering functions, (2) ordering functions, (3) service order quality, (4) FOC response time, (5) average service provisioning intervals, (6) percent of service provisioned out of interval, (7) port availability, (8) completed order accuracy, (9) orders held for facilities, (10) billing accuracy and completeness, (11) operator assistance functions, (12) directory assistance functions, and (13) 911 functions.<sup>60</sup> Indeed, ACSI believes that these shortcomings prevent any conclusion that BellSouth is providing reasonable and nondiscriminatory access to UNEs. Given BellSouth's failure to implement adequate performance measurements in these crucial areas, ACSI also agrees with DOJ's conclusion that BellSouth has not adopted enforceable performance standards nor satisfactory performance benchmarks necessary to protect against backsliding and to demonstrate that its local exchange markets have been fully and irreversibly opened to competition.<sup>61</sup>

### Conclusion

As the foregoing discussion and the record in this docket demonstrate, BellSouth is ineligible for interLATA relief and its Application should be denied. Since BellSouth makes no attempt to satisfy the requirements set forth in the Commission's *Ameritech Michigan Order*, the Commission should base its decision on the fact that BellSouth's Application is

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<sup>59</sup> *Id.*

<sup>60</sup> *DOJ Evaluation*, at 32, n.63.

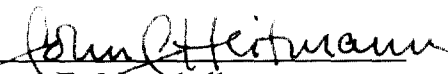
<sup>61</sup> *Id.*, at 31-33.

facially deficient. Beyond this, the Commission could point to any one of the numerous and fatal shortcomings discussed briefly herein and in greater detail in ACSI's Opposition. Most significantly, BellSouth's Application fails to: (1) satisfy the prerequisites for proceeding under Track A; (2) comply with the 14-point competitive checklist, which, among other things, requires nondiscriminatory access to ULLs and OSS; (3) meet the pricing requirements of Sections 251 and 252, which require that prices for UNEs be both cost-based and geographically deaveraged; and (4) establish performance measurements necessary to determine compliance with the Act. The Commission need only rely on one of these fatal deficiencies to deny BellSouth's Application.

Respectfully submitted,

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